

Three Quick Strategic Responses to Title III ADA Class Action Claims

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Our firm is handling a growing tide of Title III of the Americans with Disabilities Act (ADA) claims. Public accommodations — which include retailers, mall owners and restaurants, are prohibited from discriminating against individuals with disabilities and must be designed, built and altered in compliance with standards set forth in the ADA Title III Technical Assistance Manual.

Many of the cases we are handling assert nationwide class action claims. We have found a number of approaches that may resolve these claims quickly. Here are a few of the strategic approaches that can help alleviate these claims.

1. Determine “Ownership/Control” of the Sites Identified in the Class Action Complaint. In many of the class action claims we are handling, the complainants take a “shoot first and aim later” approach. They name defendants who do not own or control the property at issue. Start by reviewing the clients’ leases to determine if plaintiffs’ counsel has sued the wrong entity. Defendants who do not own or control a particular property will generally be immune from ADA liability.

2. Determine the Residence of the Named Plaintiff: Legal Standing and an Early Motion to Dismiss. In many of the cases we are handling, the same plaintiff is named in multiple suits brought against different clients in different states. Often it is impossible for the plaintiff to return to or frequent the properties that are the subject of the lawsuit. In an ADA action seeking injunctive relief, the “plaintiff must establish a likelihood of returning to defendant’s business.” A plaintiff can only satisfy the injury-in-fact element of standing where the plaintiff alleges facts “giving rise to an inference that he will suffer future discrimination by the defendant.” *Shotz v. Cates*, 256 F.3d 1077, 1081 (11th Cir. 2001); *see also Chapman v. Pier 1 Imports (U.S.) Inc.*, 631 F.3d 939, 948 (9th Cir. 2011). Consider an early motion to dismiss if the plaintiff cannot establish “injury in fact” and, therefore lacks standing.

3. Celebrate the Differences: Opposing Certification Motions. Rule 23 states the requirements for class certification. These standards tend to be difficult to satisfy in Title III nationwide class actions. The likelihood of class certification will vary from case to case, but consider the following defenses:

- *It is difficult to establish commonality.* The facilities for most defendants do not involve a common design. In parking lot cases, for example, the designs are different at each site. Without a specific review of each parking lot it is impossible to determine whether allegedly excessive sloping exists at all facilities. The ADA regulations may also vary at each facility, depending on the “new construction” date.
- *It is difficult to establish typicality.* Typicality cannot be established when a named plaintiff, who proved his or her own claim, could not necessarily prove anybody else’s claim. The plaintiff’s experience at one site may be insufficient to satisfy when there is proof that other facilities owned or operated by the defendant are ADA compliant. And, since different regulatory standards may apply, depending on the date of construction, it should be difficult for plaintiff to demonstrate he is typical of every other putative class member he or she seeks to represent.

For more information about Lane Powell’s Title III ADA Public Accommodation Practice Group, view its [Web page](#).



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